BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-738-W/S - ORDER NO. 98-311

APRIL 29, 1998

IN RE: Application of Carolina Water Service, Inc. for an Increase in its Rates and Charges for Water and Sewer Service.	)))	ORDER DENYING PETITION FOR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Petition for Reconsideration ("Petition") filed by the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"). By his Petition the Consumer Advocate requests that the Commission reconsiders its Order No. 98-163, dated March 2, 1998, and sets forth four issues on which he requests the Commission to reconsider Order No. 98-163. For the reasons set forth below, the Commission denies the Consumer Advocate's Petition.

The Consumer Advocate first requests reconsideration on the Commission's decision regarding the New Account Charge. In Order No. 98-163, the Commission determined that Carolina Water Service, Inc. ("CWS") did not have adequate notice that the New Account Charge could be reduced. The Commission ordered a hearing on the issue of the New Account Charge. In making the determination to hold a hearing, the Commission relied upon the language in the opinion of the South Carolina Supreme Court. In its opinion remanding the New Account Charge to the Commission, the Supreme Court stated in footnote 7 of the opinion that "any reduction is subject to the

requirement that the utility receive notice and an opportunity to be heard." Porter v. SCPSC et al, ___ S.C. ___, 493 S.E.2d 92, 99, n.7 (1997). The Commission also noted that a possible reduction in the New Account Charge was not framed by any notice or pleading in the case, and that the issue of a possible reduction in the charge did not arise until cross-examination of a Staff witness. The Commission then determined that notice was not properly afforded to CWS that it faced a possible reduction in a charge that had been deemed just and reasonable in a prior hearing. Based on that scenario, the Commission ordered the hearing on the issue of the New Account Charge with notice to the parties that the hearing would address the amount of the new account charge including the possibility of a reduction. The Commission finds no error in its determination that a hearing with proper notice of the possibility of a reduction in the new account charge was required by the Supreme Court's opinion.

Next the Consumer Advocate requests reconsideration on the Commission's treatment of deferred charges. In its opinion, the Supreme Court remanded the issue of deferred charges "for the Commission to remove from the rate base calculation any deferred charges that are not unanticipated and non-recurring." Porter v. SCPSC et al, 493 S.E.2d at 98. The Consumer Advocate challenges the Commission's allowance as deferred charges an expense of $7,123 related to an increase in the sales tax expense related to a sales tax audit and an expense of $8,395 for the recovery of VOC testing fees incurred by CWS. The Consumer Advocate asserts that there is no evidence of record to support the Commission's finding that these expenses are extraordinary as defined in the

Supreme Court's opinion as unanticipated and non-recurring. Petition of Consumer Advocate, p. 4.

In its opinion remanding the issue of deferred charges to the Commission, the Supreme Court did not reverse the Commission's allowance of all deferred charges, nor did the Supreme Court conclude that there was no substantial evidence of record to support the allowance of deferred charges. The Supreme Court's opinion instructed the Commission to remove any of the deferred charges which are not unanticipated and non-recurring. In Order No. 98-163, the Commission found that the expenses associated with the sales tax audit should be included. A tax audit is not a routine event. By its very nature, a tax audit is unanticipated and non-recurring. Therefore, the Commission could properly conclude that expenses associated with a tax audit could properly be included as a deferred charge. The Commission finds no error in its treatment of this charge upon which to grant reconsideration.

With regard to the VOC (Volatile Organic Compound) testing fees, the Commission in Order No. 98-163 found that the expenses related to VOC testing should be included as deferred charges. The Commission took judicial notice of the fact that the 1986 amendments to the Safe Drinking Water Act required water systems to monitor for VOCs and further noted from prior cases that CWS had contracted with a private laboratory to have the testing performed. The Commission also noted a change in the law which required the Department of Health and Environmental Control ("DHEC") to conduct all VOC monitoring as of July 1, 1993. Based on the change in the law which

required DHEC to conduct the VOC testing, the Commission determined that the expenses for VOC testing were not recurring or anticipated after July 1, 1993. As the expenses for VOC testing were not anticipated and recurring, the Commission allowed the VOC testing expenses as deferred charges. The Commission discerns no error in its determination and denies the Consumer Advocate's request for reconsideration on this issue.

Next the Consumer Advocate requests reconsideration of the Commission's determination in Order No. 98-163 that expenses associated with pressure washing and TV of sewer mains should be allowed. The Consumer Advocate asserts that there is no evidence of record to support the Commission's determination in Order No. 98-163 that the expenses of $2,078 for pressure washing and $1,493 for TV of sewer mains should be allowed. By its opinion remanding the issue of deferred charges to the Commission, the Supreme Court found that expenses which are routine and required at regular intervals "do not qualify as extraordinary because they are not unanticipated and non-recurring." Porter v. SCPSC, et al., 493 S.E.2d at 50. The Supreme Court then stated that "[s]ince these types of expenses are recurring and anticipated, they should be considered prospectively as known and measurable adjustments to test year expenses." Porter v. SCPSC, et al., 493 S.E.2d at 98 (emphasis in original).

In Order No. 98-163, the Commission removed from deferred charges expenses associated for pressure washing and TV of sewer mains. In removing these items from deferred charges, the Commission found that these expenses were maintenance expenses which were routine and recurring and therefore were not unanticipated and non-recurring.

The Commission then allowed expenses of $2,078 for pressure washing of sewer mains and $1,493 for TV of sewer mains.

The Commission believes that evidentiary support for inclusion of these expenses is found in the responses to interrogatories which are a part of the record of the case. The response to Consumer Advocate's Interrogatory 1-20 contains a schedule which demonstrates the gross amounts of expense incurred as of the end of the test year for both pressure washing and TV of sewer mains, along with the accumulated amortized amounts. The response to Consumer Advocate's Interrogatory 2-6(b) specifically refers to Commission Order No. 93-402 in Docket No. 91-641-W/S in which the Commission recognized the expenses for deferred charges up to the end of the test year in that case, which was June 30, 1992 – the year immediately preceding the test year in the instant docket. CWS's response to Consumer Advocate's Interrogatory 2-6(c) explains the TV sewer mains expense as "[c]osts incurred to inspect, via a video camera, the inside of the sewer line for blockage" and explained pressure washing of sewer mains as "[c]osts incurred to pressure wash sewer line to prevent sewer backups." CWS's response to Consumer Advocate's Interrogatory 2-32(f) explains that a 28.60% increase in sewer rodding expense, which equates to $12,500, resulted from "... an increase in preventative maintenance to improve customer service. The Company increased pressure washing of mains to minimize blockage." Also see the response to Consumer Advocate's Interrogatory 1-5 which sets forth a schedule of expense accounts for the test year and the two prior years.

Based on the responses to the interrogatories referenced above, the Commission believes there is sufficient evidence of record to support out-of-period adjustments of the expenses allowed. In fact, the record could justify somewhat higher expenses than the expenses actually allowed. The Commission has discretion with respect to making adjustments for known and measurable changes in expenses. Hamm v. SCPSC, et al., 309 S.C. 282, ___, 422 S.E.2d 110, 115 (1992). While the adjustments must be known and measurable within a reasonable degree of certainty, absolute precision is not required. Id.

However, as a method to check the amount of expenses, the Commission could compare the expense figures from the Interrogatories listed above to similar exhibits from the rate case in Docket No. 91-641-W/S. Such a comparison would reveal that expenses of $2,381 for pressure washing sewer mains and $1,492 for TV sewer mains were incurred during the test year. Comparing the expense figures from Docket No. 91-641-W/S for the year ending June 30, 1992, with the accumulated test year figures from the instant docket for the year ending June 30, 1993, gives a reasonable determination of the expenses incurred during the test year for pressure washing sewer mains and for TV sewer mains. Therefore, the Commission finds no error in allowing the expenses for pressure washing sewer mains and TV sewer mains.

Finally, the Consumer Advocate asserts that the Commission erred in Order No. 98-163 in ordering that an interest rate of 8.75% per annum be applied to refunds in this case. The Consumer Advocate contends that the Commission's Order should require interest at the rate of 12% per annum pursuant to S.C. Code §58-5-240 (Supp. 1997).

In Order No. 98-163, the Commission found that interest at the rate of 8.75% per annum should be applied to refunds in this case. The 8.75% per annum interest rate is the legal rate of interest established by S.C. Code Ann. §34-31-20 (1987). The Consumer Advocate relies on the third unnumbered sentence of §58-5-240(D) which provides that "[a]ll increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve per cent per annum." The Consumer Advocate asserts that the requirement of 12% interest applies to non-approved increases under the provision of this section and contends that the 12% interest requirement applies to the §58-5-240 in its entirety and not just subsection (D) which governs a utility placing non-approved rates into effect under bond.

The Commission disagrees with the Consumer Advocate's assertion and interpretation of the statute. The Commission interprets §58-5-240(D) to provide for interest at 12% per annum in cases where a utility puts rates into effect under bond and the rates under bond are subsequently not approved. In reaching its interpretation, the Commission recognizes that S.C. Code Ann. §58-5-240(D) contains the provisions for a utility placing rates into effect under bond. The Commission further recognizes that when a utility places rates into effect under bond, the rates under bond are not rates that were "approved rates" by the Commission. Thus the Commission interprets the 12% per annum interest rate contained in §58-5-240(D) to be inapplicable to the situation where refunds are ordered on Commission approved rates which were subsequently reduced on appeal.

The Commission believes that Consumer Advocate is in error when he asserts that the single word "section" in the sentence comprising the third unnumbered paragraph of subsection (D) mandates the reading of the statute which he proposes. The Commission interprets that sentence to refer to the situation in which a utility has sought a rate increase, the rate increase is not approved by the Commission, the utility appeals, the utility places the rates into effect under bond, and the utility's appeal is denied by the Court.

Also in support of the Commission's interpretation of the above quoted sentence is the fifth unnumbered paragraph of §58-5-240(D) which states that" [i]n all cases in which a refund is due, the Commission shall order a total refund of the difference between the amount collected under bond and the amount finally approved." Clearly, the later language of §58-5-240(D) refers to the situation where rates were put into effect under bond and not the situation where a utility charges rates approved by the Commission and where the Commission approved rates were later overturned on appeal. Thus, when reading §58-5-240(D) in its entirety, it is reasonable to conclude that the 12% interest rate applies to rates which were not approved by the Commission and were placed into effect under bond.

As the utility in the instant case charged "approved rates" pursuant to Commission order, the Commission believes that the 12% per annum interest is inapplicable to the refunds ordered in the instant case. Therefore, the Commissions finds no error in its interpretation of S.C. Code Ann. §58-5-240(D)(Supp. 1997) nor in

providing for interest at the rate of 8.75% per annum to accrue on the refunds ordered by Order No. 98-163.

IT IS THEREFORE ORDERED THAT:

1. For the reasons set forth herein, the Petition for Reconsideration filed by the Consumer Advocate is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Deputy Executive Director

(SEAL)